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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 Patrick K Gibson,

11 Plaintiff,

12 v.

13 Washington State Department of
14 Corrections et al,

15 Defendants.

CASE NO. C17-5187 RBL-DWC

REPORT AND RECOMMENDATION

Noting Date: June 2, 2017

16 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States
17 Magistrate Judge David W. Christel. The Court's authority for the referral is 28 U.S.C. §
18 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

19 Defendants filed the pending motion to dismiss on March 21, 2017. Dkt. 5. After the
20 Motion to Dismiss was filed, the Court granted Plaintiff's Motion to Amend (Dkts. 9, 12) and
21 directed Plaintiff to file an amended complaint on or before June 5, 2017. Dkt. 12.

22 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d
23 1258, 1262 (9th Cir. 1992). The original complaint is "treated thereafter as non-existent." *Loux v.*
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1 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,
2 693 F.3d 896 (9th Cir. 2012). Defendants' Motion to Dismiss attacks the Original Complaint,
3 which will be "non-existent" because Plaintiff was granted leave to file an amended complaint.
4 Dkt. 12. Accordingly, the undersigned recommends Defendants' Motion to Dismiss (Dkt. 5) be
5 denied as moot.

6 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
7 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
8 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*
9 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
10 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on June
11 2, 2017, as noted in the caption.

12 Dated this 10th day of May, 2017.

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15 David W. Christel
16 United States Magistrate Judge
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